

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Solid and Hazardous Waste Commission

Hazardous Materials and Waste Management Division (HMWMD)

6 CCR 1007-2

STATEMENT OF BASIS AND PURPOSE AND SPECIFIC STATUTORY AUTHORITY FOR AMENDMENTS TO SECTIONS 1.7.1 AND 1.7.4

(Adopted by the Solid and Hazardous Waste Commission on November 16, 2010)

Basis and Purpose

The Hazardous Materials and Waste Management Division (HMWMD) prepared amendments to Sections 1.7.1 and 1.7.4 of the Regulations Pertaining to Solid Waste Sites and Facilities ("the Regulations"), to fully implement the Act. These amendments to 6 CCR 1007-2, Sections 1.7.1 and 1.7.4 are made pursuant to the authority granted to the Solid and Hazardous Waste Commission in Sections 25-15-302 and 30-20-109, C.R.S. The purpose of the amendments to Sections 1.7.1 and 1.7.4 are twofold. First, Section 1.7.1 establishes the Solid and Hazardous Waste Commission's authority to set the Solid Waste User Fee (SWUF) within the statutory limits. Second, Section 1.7.4 establishes the SWUF for the Solid Waste Program, the Hazardous Substance Response Fund (HSRF) and the Department of Law (DOL).

Amendment of Regulations Pertaining to Solid Waste Sites and Facilities (6 CCR 1007-2 Part 1) – Sections 1.7.1 and 1.7.4

Background

The HMWMD initiated a stakeholder process in September 2009 to address a significant projected revenue shortfall in the Solid Waste Cash Fund and the Hazardous Substance Response Fund. Both of these funds receive revenue from the Solid Waste Users Fee. This stakeholder process developed new statutory language that became House Bill 10-1329.

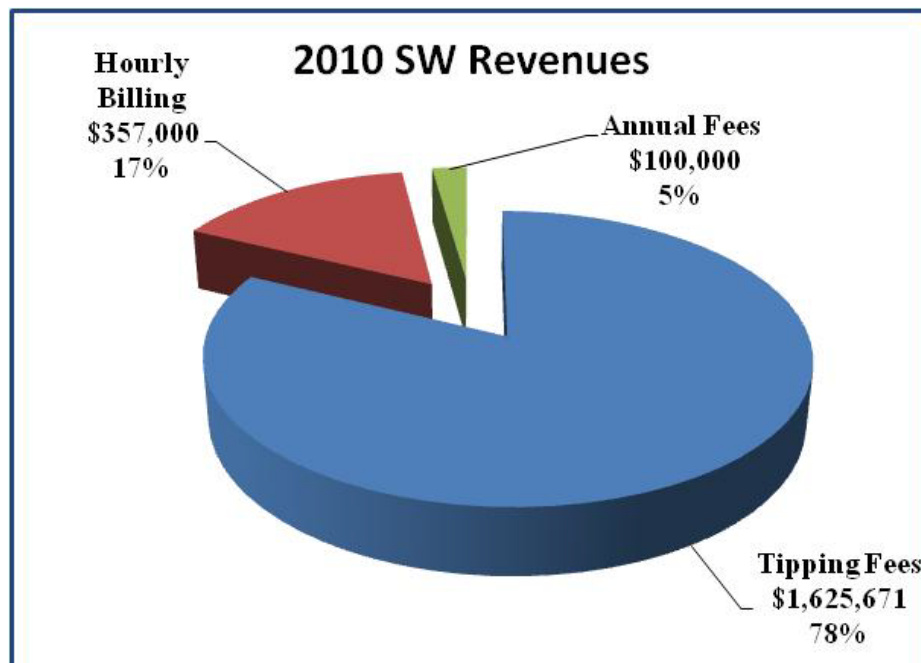
HB 10-1329 contains six major provisions including: 1) moving limited SWUF fee setting authority from the legislature to the Solid and Hazardous Waste Commission, 2) establishing individually adjustable fees for the SWUF, HSRF and a new fee for the DOL, 3) setting a SWUF ceiling of \$0.50 for these three fees, 4) setting an HSRF ceiling of \$10,000,000, 5) providing advanced facility notification of fee changes prior to the effective implementation date, and 6) establishing the SWUF sunset date as July 1, 2017.

After the legislative session, a follow-up regulatory stakeholder process was begun in July 2010. Local governments, solid waste facility owners and operators, consultants, interest groups, lobbyists and HMWMD representatives attended the first meeting. Three additional meetings were conducted between August 2010 and September 2010 at which time the stakeholders reached consensus on the fee constructs and amounts. The HMWMD accommodated potentially interested parties located in outlying

areas of the state by making it possible to participate in these meetings via simulcast conference call and internet video conferencing.

Summary of Regulatory Proposal

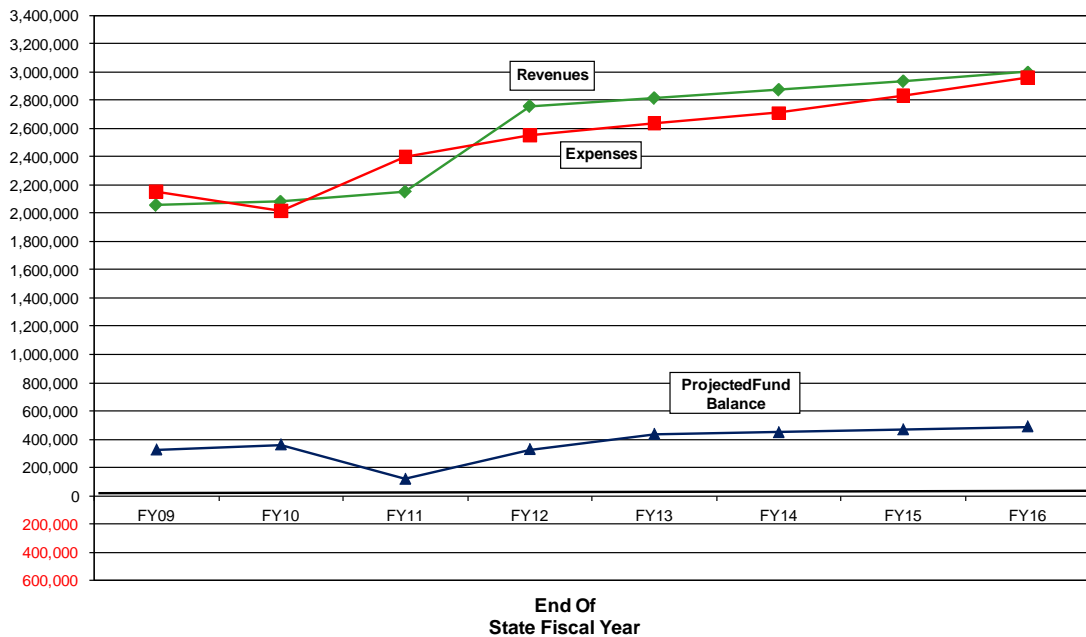
The Solid Waste and Material Management Unit of the Hazardous Materials and Waste Management Division does not receive any general fund monies. Fees support 100% of unit activities. The fees were historically comprised of two sources including: 1) the Solid Waste User Fee (also referred to as the Hazardous Substance Response Fee or tipping fees) and 2) hourly activity fees. House Bill 07-1288 established a third fee to support the Unit's efforts. This fee is applied to facilities that did not collect and remit the SWUF. In addition, the bill gave the Commission fee setting authority for the hourly activity and annual facility fees. HB10-1329 transferred limited SWUF setting authority to the Commission. The SWUF provided 78% of the Solid Waste Program's funding in fiscal year 2010.



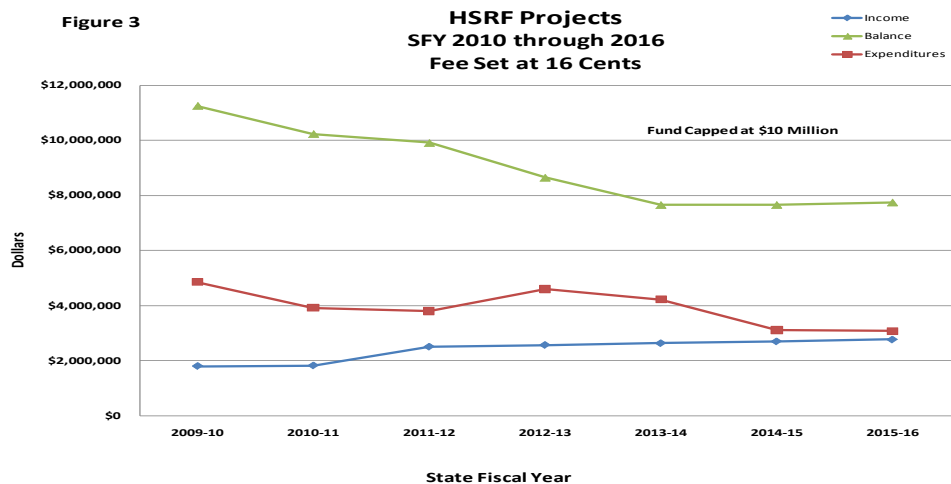
As part of the HB 10-1329 legislative stakeholder process, fee amounts for the Solid Waste Program, the Hazardous Substance Response Fund and the Department of Law were developed and vetted with stakeholders. These fee amounts were then carried forward into the interactive regulatory stakeholder negotiations and statewide discussions. The following fee structure was developed for the three portions of the SWUF as follows:

- 1) The SWUF to support the Solid Waste Program activities as described in Section 25-16-104.5(1.7)(a)(I) will be increased to thirteen cents (\$0.13) per cubic yard or forty-three cents (\$0.43) per ton to help cover the expense of solid waste staff plus direct and indirect costs of staff time. The thirteen cents (\$0.13) per cubic yard fee is projected to provide for full program staffing for the first time in over three years. In addition, this fee amount should keep the program solvent until the sunset date of 2017.

Solid Waste Program - Budget Projection
\$0.13 CY Fee & 2.5% Recovery + \$70K Contract



- 2) The SWUF to support the HSRF activities as described in Section 25-16-104.5(1.7)(a)(II) will be sixteen cents (\$0.16) per cubic yard or fifty-three cents(\$0.53) per ton. The sixteen cents (\$0.16) per cubic yard is projected to provide sufficient funding for the \$4,000,000 minimum operating budget that is required to ensure fund solvency while not accumulating a fund balance that exceeds the statutory \$10,000,000 fund balance maximum.



- 3) The SWUF to support the Department of Law activities as described in Section 25-16-104.5(a)(III) will be three cents (\$0.03) per cubic yard or ten cents \$0.10 per ton.

Stakeholder Issues:

The stakeholders raised several key issues during the regulatory stakeholder process as follows:

- 1) Regulatory Construct issues:
 - a. The stakeholders indicated that many of their facilities were installing scales to weigh the amount of solid waste disposed at the facilities. Therefore, they requested that the regulations include the cubic yard and per ton fee amounts. This request was accommodated in two ways. First the regulation text specifically states the cubic yard and ton fee amounts, and second the regulations include a new table that clearly depicts the cubic yard and per ton fee amounts.
 - b. The stakeholders requested that the “conversion factors” previously located Seciton1.7.4.D be moved Section 1.7.4.A. This text revision is reflected in the proposed regulation.
- 2) The stakeholders indicated that they did not want to re-adjust the SWUF in the near future. Therefore, they requested that we re-evaluate the fee amounts to ensure our costs would be covered for the next several years. The goal was to ensure that they would not have to propose another a fee increase to their commissions for several years. Our fee re-evaluation resulted in the HSRF and DOL fees remaining the same as those proposed during the legislative process. The Solid Waste Program fee was increased by one cent (\$0.01) from twelve cents (\$0.12) to thirteen cents (\$0.13), as depicted above.

Changes since the Conclusion of the Stakeholder Process:

The proposed fee that was presented for the HSRF during the stakeholder process was twenty-six cents per cubic yard. This number had been based on the projections of income and expenditures for the last year. At the completion of year end close, actual amounts for beginning balance, income and expenditures were entered into the HSRF projection model. The state fiscal year 2009 actual amounts showed that incomes were higher and expenses lower for the fiscal year compared to the projections in the model. The result is that the proposed fee for the HSRF has been decreased to sixteen cents per cubic yard.

Regulatory Alternatives:

This regulation is the direct result of HB10-1329 and its legislative stakeholder process. Therefore, no other regulatory alternatives were evaluated.